

**Lease No. DACA-31**

**(SITE NAME Site)**

**ENHANCED USE LEASE**

**DEPARTMENT OF THE ARMY**

**INSTALLATION**

**CITY, STATE**

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Lease No. DACA-31-

(NAME OF EUL SITE)

ENHANCED USE LEASE  
DEPARTMENT OF THE ARMY  
NAME OF INSTALLATION  
CITY, STATE

THIS ENHANCED USE LEASE ("Lease"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY ("Secretary"), hereinafter referred to as the "Lessor", and \_\_\_\_\_, hereinafter referred to as the "Lessee."

WITNESSETH:

A. That Lessor, acting by and through the Secretary, by the authority of Title 10, United States Code ("USC"), Section 2667 ("Section 2667"), and NAME OF LESSEE, a Maryland limited liability company ("Developer"), have entered into that certain Master Agreement to Lease dated \_\_\_\_\_, 2006 ("Master Agreement") pursuant to which certain property denominated the "Project Site" therein is planned for development through a series of long term leases in the form attached to the Master Agreement as "Exhibit B" thereto, each such long term lease (a "Ground Lease") to demise a portion of the Project Site to Developer or other "Ground Tenant" as defined therein. The term "Project" shall mean the land comprising the Project Site and all improvements thereon or hereafter constructed thereon. Improvements (as hereinafter defined) shall refer to the initial improvements made to the Lease Premises. Additional Improvements (as hereinafter defined) shall refer to all other improvements to the Lease Premises, including all additional improvements, additions, modifications and alterations to the Lease Premises and to the Improvements. Any and all references herein to "improvements" on the Leased Premises, or words of similar import, shall refer to any and all improvements, additions, modifications and alterations in, on or to the Leased Premises, including without limitation any Improvements and Additional Improvements.

B. Pursuant to the Master Agreement, Developer has identified the premises ("Lease Premises") described in Exhibit A attached hereto, and by this reference made a part hereof, for the development of certain initial improvements ("Improvements"), the conceptual site plan and conceptual elevation of which has been or will be approved by Lessor pursuant to the Design Review Process (as defined in the Master Agreement), and Developer has provided Lessor with the requisite notice of its election to enter into this Lease, or permit Lessee to enter into this Lease, as the case may be, all in accordance with the terms and conditions of the Master Agreement.

C. Pursuant to Section 2667, the Secretary has determined that this Lease and the terms and conditions set forth herein are advantageous to the United States and are in the public interest.

**NOW THEREFORE**, Lessor, acting by and through the Secretary, by the authority of Section 2667, for the consideration hereinafter set forth, hereby leases to Lessee, and Lessee hereby leases from Lessor, the Lease Premises including all improvements, easements, rights of way and all other rights and appurtenances, whether now or hereafter, pertaining or related to the Lease Premises, subject to the terms, covenants and conditions set forth herein.

## **1. USE OF THE LEASE PREMISES**

Lessor hereby conveys, bargains, grants and leases a leasehold interest in the Lease Premises to Lessee, and Lessee hereby leases a leasehold interest in the Lease Premises from Lessor, for the Term (hereinafter defined) and upon the terms and conditions hereinafter provided. The Lease Premises and any improvements thereon or constructed thereon, including any additions or renovations thereto, may be used by Lessee, or by any sublessee, licensee or other occupant of the Lease Premises, for the following uses: **NAME PERMITTED USES HERE** and retail uses ("**Permitted Retail Uses**") incidental to the above-referenced primary uses (collectively, "**Primary Uses**"). In addition to the Primary Uses, the Lease Premises may also be used for such other uses as may be approved from time to time by Lessor at the request of Lessee, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such uses are compatible with the **INSTALLATION NAME** Master Plan (hereinafter defined). Lessor and Lessee agree that, except for Permitted Retail Uses, retail uses and housing and residential uses shall be deemed not compatible with the **INSTALLATION NAME** Master Plan. Permitted Retail Uses shall expressly include restaurant, newspaper and gift shops and other retail uses that are either located on the first floor of an office building in the Project Site or are in or related to any **NAME OTHER TYPE of BUILDING if applicable eg hotel, etc.** within the Project Site. The term "sublessee" as used herein shall also include a "subtenant" or other such party to a sublease of all or any portion of the Lease Premises. The **INSTALLATION NAME** Master Plan shall mean that current master plan for the area comprising the **INSTALLATION NAME** and known as **NAME OF MASTER PLAN**. If Lessor desires to sublease any portion of the Lease Premises for any retail use that is then being provided to the **INSTALLATION NAME** by a retailer/contractor through the program of Morale, Welfare and Recreation (which is overseen by the Department of Defense, Military Community and Family Policy) ("MWR"), then, prior to entering into a sublease for such retail use, Lessee shall provide Lessor notice thereof and an opportunity for Lessor and/or MWR to arrange for Lessee and such retailer/contractor to meet to discuss any available leasing opportunities for such retailer/contractor and determine if Lessee and such retailer/contractor can agree upon any terms for the lease of such retail space that are mutually acceptable to retailer/contractor and Lessee in their respective sole discretion. Upon Lessee's written request, Lessor shall provide Lessee in writing with a list of the retail uses then being provided at the **INSTALLATION NAME** by a retailer/contractor through the MWR.

## **2. TERM**

a. This Lease shall be for an initial term ("**Initial Term**") beginning on the Effective Date and ending at midnight on the last day of the fiftieth (50<sup>th</sup>) anniversary of the Effective Date (the "Expiration Date"), unless sooner terminated under Paragraph 4 hereof entitled "TERMINATION, REVOCATION, AND RELINQUISHMENT", or unless extended pursuant to the terms hereof. The term "**Lease Year**" shall mean each consecutive twelve-month

period; provided, however, that the first Lease Year shall begin on the Partial Rent Commencement Date (as hereinafter defined) and shall end on the date that is twelve (12) full months after the Full Rent Commencement Date. The term "**Term**" shall mean the Initial Term as the same may be extended by the Extension Term (hereinafter defined) pursuant to subparagraph 2.c., below.

b. Notwithstanding any other provision of this Lease, if Lessee, in Lessee's sole discretion, determines that the development of the Improvements on the Lease Premises is not feasible, Lessee may, at any time prior to the first anniversary date of the Effective Date ("**Early Termination Period**"), upon sixty (60) days prior written notice to Lessor ("**Early Termination Notice**"), terminate this Lease without penalty or recourse of any kind. Prior to exercising this right, Lessee agrees to enter into good faith negotiations with Lessor concerning revisions to the Improvements that may make the development thereof on the Lease Premises feasible, in Lessee's sole judgment. Following such termination, Lessee and Lessor shall have no further obligations under this Lease, and the Lease Premises shall be free and clear of the encumbrance of this Lease. The termination provisions contained in this subparagraph 2.b. shall become null and void and be of no further force or effect (i) if the Early Termination Notice is not given by Lessee on or before the first anniversary of the Effective Date, (ii) at the written request of Lessee given at any time prior to the first anniversary of the Effective Date, or (iii) upon the commencement of construction of the Improvements by Lessee, or Lessee's agents or contractors, which commencement shall be no earlier than the date Lessee commences actual physical excavation activity on the Lease Premises for such Improvements. In the event that Lessee exercises its right to terminate this Lease pursuant to the provisions hereof, Lessee shall provide Lessor with an instrument in recordable form confirming the termination of this Lease.

c. Lessee shall have the right to request in writing Lessor's approval of an option to extend the Term of this Lease. Lessor shall respond to such request within thirty (30) days. If Lessor approves of an option (in Lessor's sole discretion), then Lessor shall have one (1) option ("**Extension Option**") to extend the Initial Term (as may have been extended pursuant to Paragraph 2.d hereof) for an additional period of **NUMBER OF YEARS** consecutive years ("**Extension Term**") provided that (1) Lessee gives written notice ("**Exercise Notice**") to Lessor of its election to exercise the Extension Option no later than twelve (12) months prior the expiration of the initial Term, and (2) as of the date that the Exercise Notice is delivered, no default (beyond the notice and cure period set forth in this Lease) has occurred and then remains uncured. All terms and conditions of this Lease shall remain in full force and effect during the Extension Period, except that annual rent payable during the Extension Period shall be at the then current market rental rate for unimproved land located in or about **City, State** and used for the uses that the Lease Premises is being used at the time of the commencement of such Extension Period (taking into consideration market concessions then being offered and all other relevant factors) ("**Market Rate**"), but in no event shall such annual rent be less than the annual rent payable during the last Lease Year of the Initial Term. Lessor and Lessee shall reasonably determine the amount of annual Rent for the Extension Period within thirty (30) days after Lessor's receipt of Lessee's Exercise Notice. The annual Rent for the Extension Period as so determined shall thereafter increase on **LIST SPECIFIC BUSINESS TERMS FOR TIMES AND AMOUNTS OF INCREASE**.

### 3. CONSIDERATION

a. Beginning on the Effective Date, Lessee shall be responsible to maintain, at

Lessee's sole cost and expense, the Lease Premises in accordance with the standards established in Paragraph 13 hereof entitled "PROTECTION OF PROPERTY".

b. Commencing on the Partial Rent Commencement Date, Lessor shall receive total annual rent ("**Rent**") from Lessee in the annual amounts set forth in Exhibit B attached to and made a part of this Lease, which amounts shall be paid in equal monthly/quarterly/annual etc. installments as hereinafter provided. It is the intent of the parties that the Rent may be collected "in-kind" as authorized by Section 2667 and in order to facilitate the receipt by Lessor of the Rent, in the form of in-kind consideration or cash consideration, the cash value of the Rent (i.e., the amounts shown on Exhibit B) shall be paid in equal monthly/quarterly/annual etc. installments, by good check or wire transfer, into a segregated interest bearing account ("**Escrow Account**"). Lessee agrees that the Escrow Account shall be used solely for the purpose of funding to Developer (or its designee) any in-kind consideration provided by Developer or to release to Lessor, as cash consideration, any available funds therein, all as provided in the Escrow Account. Upon depositing each installment of Rent (as shown on Exhibit B) into such Escrow Account as provided above, Lessee shall have satisfied its obligation with respect to the Rent payable hereunder, it being understood that Lessee shall have no obligation to provide any in-kind consideration. The Escrow Account shall be subject to such procedures and controls as are stated in the Escrow Agreement, executed by Lessor, Lessee, Developer and the "Escrow Agent" thereunder in the form attached hereto as Exhibit E. Notwithstanding anything contained herein to the contrary, from the Partial Rent Commencement Date until the Full Rent Commencement Date (the "Partial Rent Period"), the Rent obligation of Lessee hereunder (and the amount Lessee shall be required to deposit in the Escrow Account in full satisfaction of its Rent obligations hereunder) shall be Name amount of percent% of the amount otherwise payable hereunder (as shown in Exhibit B hereto). As used herein, the term "**Partial Rent Commencement Date**" shall mean the date that this Lease has been executed and Lessee has broken ground and started construction of its Improvements on the Lease Premises. As used herein, the term "**Full Rent Commencement Date**" shall mean the date that is the earlier of (i) the date that the Improvements to be constructed on the Lease Premises have been substantially completed and a base building shell and completion certificate has been issued for the Improvements, and (ii) the date that is Number of months months after the Effective Date. Developer is a third party beneficiary of the obligations of Lessor under this Paragraphs 3b and 3c hereof.

c. Rent shall be in the amount set forth in Exhibit B which has been determined based upon the schedule set forth in Section 1.2.4 of the Master Agreement applicable in respect of the initial use and planned rentable area/number of rooms if hotel of the Improvements. After the Improvements have been substantially completed, Lessor and Lessee shall execute a confirmation of the number of square feet/or guest rooms in the Improvements and revise Exhibit B to the extent required.

d. All Rent to be deposited in the Escrow Account and other payments due to Lessor under the terms of this Lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 USC Section 3717 ("**Debt Collection Act**"), it being understood that any amounts due hereunder that are paid into the Escrow Account will be deemed paid hereunder when deposited into the Escrow Account. The Debt Collection Act requires the imposition of (i) an interest charge for

the late payment of debts owed to the United States, (ii) an administrative charge to cover the costs of processing and handling delinquent debts, and (iii) the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the Debt Collection Act will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined in accordance with the Debt Collection Act and any regulations promulgated thereunder, on any late payment of Rent. Interest will accrue from the date that the Rent was due. An administrative charge, not to exceed Five Hundred Dollars (\$500.00), to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, Lessor will impose a penalty charge of five percent (5%) per annum on any payment of Rent, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the amount due is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid Rent or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

(4) No interest or administrative charges shall be imposed by Lessor on any late payment if Lessee pays the amount due within 30 days after receiving written notice from Lessor that such amount is past due and the amount thereof. This 30-day period may be extended at Lessor's sole discretion. No penalty shall be imposed by Lessor on any late payment if Lessee pays the amount due within 90 days after receiving written notice from Lessor that such amount is past due and the amount thereof. Notwithstanding the foregoing, Lessor shall not impose any interest, administrative charge or penalty upon Lessee while Lessee in good faith is disputing the amount of the payment, so long as Lessee pays to Lessor any undisputed amount thereof.

e. Upon written request of Lessor, Lessee shall, within thirty (30) days of such request, provide to Lessor the names of the all persons or entities with an equity interest in Lessee, it being expressly understood, however, that no investment by any party in the development or re-development of the Lease Premises shall be subject to the approval of Lessor. It is understood and agreed that no person or entity may hold an equity interest in Lessee if such person or entity is on the list of Non-Qualifying Parties referenced in subparagraph 5.j. hereof.

#### **4. TERMINATION, REVOCATION, AND RELINQUISHMENT**

a. Lessee is charged at all times with full knowledge of all the limitations and requirements of this Lease. This Lease may be terminated in the event Lessee violates any of the terms and conditions of the Lease and continues and persists in such non-compliance or fails to initiate corrective action within all applicable notice and cure periods, including any notice and cure periods which may be available to a mortgagee of Lessee's leasehold interest as specified in this Lease, all as more particularly provided below. Lessee will be notified by Lessor of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance, or to initiate the necessary corrective action, which

period of time shall be not less than ninety (90) days from the date of receipt by Lessee of such writing providing notice or confirming notice is received by Lessee, provided, however, that if the matter that is subject to the notice is of such a nature that it cannot reasonably be cured within said ninety (90) day period, then no default shall be deemed to have occurred if Lessee promptly, upon the receipt of notice from Lessor, commences curing the default within said ninety (90) day period, and thereafter diligently prosecutes the same to completion, provided, further, however, if such cure or corrective action must be initiated in less than said ninety (90) day period due to a specific requirement of any Applicable Laws, and Lessee receives reasonable and adequate notice of the requirement for such cure or corrective action, then Lessee shall commence such cure or corrective action in less than said ninety (90) day period. Notwithstanding the provisions of this subparagraph 4.a., no default or breach of this Lease shall be deemed to have occurred if Lessee promptly notifies Lessor in writing that a cure of the default cannot occur within the time limits of this subparagraph due to requirements of any Applicable Laws, and that a longer period to commence and diligently prosecute such cure shall be required. Said notification shall cite the Applicable Laws, and the amount of additional time necessary due thereto and Lessor shall thereafter cure the default within such time.

b. Should Lessee default as described above, and continues and persists in such non-compliance or fails to initiate corrective action within all applicable notice and cure periods, including any notice and cure periods which may be available to a mortgagee of Lessee's leasehold interest as specified in this Lease, Lessor may, at its option, (i) seek injunctive or such other relief (including without limitation, recovery of damages) as may be permitted by law or in equity; or (ii) upon thirty (30) days prior written notice to Lessee of its intention to do so and describing the action proposed to be taken, take such measures as Lessor deems reasonable to cure such default, and charge all reasonable costs and expenses so incurred to Lessee; or (iii) give Lessee thirty (30) days prior written notice of its intention to end the term of this Lease and thereupon at the expiration of those thirty (30) days if Lessee has not cured the default, or has failed to initiate corrective action, and subject to the right of any mortgagee or sublessee under Paragraph 5, below, the Term of this Lease shall expire as completely as if that date were the date definitely fixed in this Lease for the expiration of the Term.

c. Notwithstanding any remedies granted to Lessor under this Lease, the obligations of Lessee, and any sublessee or mortgagee hereunder, are on a nonrecourse basis, and Lessor shall look only to Lessee's interest in the Lease Premises and applicable insurance proceeds for satisfaction of any debts or obligations of Lessee or any sublessee or mortgagee hereunder; provided, however, in the event Developer is the Lessee hereunder, this Section 4.c shall not limit any liability that Developer may have under Section 1.2.1 of the Master Agreement.

d. The following shall be deemed a default by Lessor and a breach of this Lease by Lessor: Lessor's failure to observe or perform any of its obligations under the terms, covenants, or conditions of this Lease if such failure persists after the expiration of ninety (90) days from the date Lessee gives written notice to Lessor calling attention to the existence of that failure, but, if the matter that is the subject of the notice is of such a nature that it cannot be reasonably cured within said ninety (90) days, then no default shall be deemed to have occurred if Lessor promptly, upon the receipt of the notice, commences the curing of the default and thereafter diligently and continuously prosecutes the same to completion, provided, further, however, if such cure or corrective action must be initiated in less than said ninety (90) day period due to a specific

requirement of any Applicable Laws, and Lessor receives reasonable and adequate notice of the requirement for such cure or corrective action, then Lessor shall commence such cure or corrective action in less than said ninety (90) day period as may be so required. Notwithstanding the foregoing, in the event the failure of Lessor to observe or perform any of its obligations under the terms, covenants, or conditions of this Lease interferes in any material respect with the use or occupancy of the Lease Premises by Lessee or any occupant thereof or interferes with the provision of any services to any occupant of the Lease Premises, then Lessor promptly, upon the receipt of the notice, shall commence the curing of the default and thereafter diligently and continuously prosecute the same to completion as soon as reasonably possible thereafter. Notwithstanding the provisions of this subparagraph 4.d., no default or breach of this Lease shall be deemed to have occurred if Lessor promptly notifies Lessee in writing that a cure of the default cannot occur within the time limits of this subparagraph due to requirements of any Applicable Laws, and that a longer period to commence and diligently prosecute such cure shall be required. Said notification shall cite the Applicable Laws, and the amount of additional time necessary due thereto and Lessor shall thereafter cure the default within such time.

e. Should Lessor default as described above, Lessee may, at its option, following the expiration of applicable notice and cure periods, (i) seek injunctive or such other relief (including without limitation, recovery of damages) as may be permitted by law or in equity; or (ii) upon thirty (30) days prior written notice to Lessor describing the proposed actions to be taken, take such measures as Lessee deems reasonable to mitigate the effects of or cure such default and charge all costs and expenses so incurred to Lessor (which Lessor shall pay within thirty (30) days after receipt of an invoice therefor from Lessee); or (iii) give Lessor thirty (30) days written notice of its intention to end the term of this Lease and thereupon at the expiration of those thirty (30) days the Term of this Lease shall expire as completely as if that date were the date definitely fixed in this Lease for the expiration of the Term.

f. In accordance with Paragraph 10 hereof, entitled "TRANSFERS, ASSIGNMENTS AND SUBLEASING", any sublease or license is to be subordinate to this Lease. Should non-compliance described in subparagraph 4.a. above, stem from the activities of a sublessee, licensee, or any other person, excluding an assignee subject to an assumption agreement pursuant to Paragraph 10 hereof entitled "TRANSFERS, ASSIGNMENTS AND SUBLEASING", Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee, licensee, or such other person, as appropriate.

## 5. SUBLESSEE AND MORTGAGEE RIGHTS

a. Any improvements made on or to the Leased Premises shall be and remain the property of Lessee throughout the Term of this Lease. Furniture, trade fixtures, inventory, stock-in-trade and related equipment installed by Lessee or any sublessee or licensee on the Lease Premises shall be and remain the property of Lessee or such sublessee or licensee as applicable. Any furniture, trade fixtures, inventory, stock-in-trade and related equipment so installed in or on the Lease Premises, shall, at the option of the party installing same or having the right thereto, be and remain the property of such party upon termination of this Lease. Lessee shall also be permitted from time to time to remove any of the furniture, trade fixtures, inventory, stock-in-trade and related equipment installed by Lessee or any sublessee, or licensee of Lessee in or on the Lease Premises. At Lessee's request, Lessor shall execute such reasonable documents as Lessee and/or any sublessee, or licensee of Lessee, and/or any lender seeking or holding a security interest in Lessee's property or in the property of any such sublessee, or licensee may request waiving any rights or claims of Lessor to any such property.

b. Lessee shall have the right, from time to time, to subject this Lease to the security interest of one or more mortgagees. If Lessee shall have made any mortgage hereunder, and if the mortgagee under such mortgage shall have given to Lessor a notice ("**Mortgagee Notice**"), specifying the name and address of such mortgagee, Lessor shall give to such mortgagee a copy of each notice of default by Lessee at the same time as and whenever any such notice of default shall thereafter be given by Lessor to Lessee, addressed to the mortgagee at the address last furnished to Lessor. In addition, if Lessee shall have given to Lessor a notice ("**Sublessee Notice**"), specifying the name and address of such sublessee and requesting that such sublessee receive notice of any default by Lessee, then Lessor shall give to such sublessee a copy of each notice of default by Lessee at the same time as and whenever any such notice of default shall thereafter be given by Lessor to Lessee, addressed to the sublessee at the address last furnished to Lessor.

c. Lessor will accept performance by any assignee, sublessee, mortgagee, or licensee of Lessee of any covenant, condition or agreement to be performed under this Lease by Lessee, with the same force and effect as though performed by Lessee.

d. No default by Lessee shall be deemed to exist, so long as an assignee, sublessee, mortgagee, or licensee of Lessee, in good faith, has commenced promptly to rectify the claimed default and to prosecute the same to completion with due diligence.

e. From and after the giving of any Mortgagee Notice or Sublessee Notice, Lessor and Lessee will not cancel, surrender, or modify or amend this Lease in any respect that will materially adversely affect the mortgagee(s) without the prior written approval of the sublessee(s) and mortgagee(s) entitled to such notice, provided, however, that the provisions of this subparagraph e. shall not compromise the rights of Lessee or Lessor to terminate this Lease as provided herein, subject, however, to the mortgagee(s) and sublessee(s) right to cure the default or defaults giving rise to such right of termination.

f. No sublessee, mortgagee, or licensee of Lessee shall become liable under this Lease except as specifically set forth herein.

g. Lessor's limited responsibility under this Paragraph 5 entitled "SUBLESSEE AND MORTGAGEE RIGHTS" with respect to sublessee and mortgagee notice and cure shall not be construed to give mortgagees or sublessees any other rights or third party beneficiary status under this Lease.

h. If a mortgagee or purchaser at foreclosure of a mortgage shall acquire Lessee's interest in the Lease Premises, by virtue of the default by Lessee under said mortgage or otherwise, this Lease shall continue in full force and effect so long as the mortgagee or purchaser cures any default hereunder and assumes all of Lessee's obligations under this Lease on a going forward basis. For the period of time during which a mortgagee or any purchaser at foreclosure of a mortgage is Lessee under this Lease, such mortgagee or purchaser shall become liable under and fully bound by the provisions of this Lease. In addition, if requested by any such mortgagee or purchaser in writing within sixty (60) days of such foreclosure, Lessor agrees to enter into a new lease ("**New Lease**") of the Lease Premises with such mortgagee, purchaser or the designee of either of them, for the remainder of the Term, effective as of the date of such foreclosure, at the same Rent and upon the same terms, covenants and conditions as contained in this Lease.

i. Upon not less than thirty (30) days prior written notice from the other, both Lessor and Lessee agree, in favor of the other, to execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been any modifications that the same are in full force and effect as modified and stating the modifications), and the dates to which any Rent and other charges due hereunder have been paid and any other information reasonably requested. Without limiting the generality of the foregoing, at Lessee's request, such statement of Lessor shall certify, (a) whether or not any Rent is due hereunder and, if so, the amount thereof; (b) whether or not this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications); (c) whether or not Lessor is in default and, to Lessor's knowledge, whether Lessee is in default, and specifying the nature of any such default; and (d) such other matters relating to this Lease as Lessee or any mortgagee or sublessee, or prospective mortgagee or sublessee, may reasonably request.

j. If the Lease is terminated due to a default that cannot be cured by a mortgagee holding a mortgage on Lessee's leasehold interest, Lessor shall provide notice of such termination to all mortgagees eligible to receive notices pursuant to subparagraph 5.b. above. If requested by any such mortgagee in writing within sixty (60) days of receipt of the notice of termination from Lessor, Lessor shall recognize such mortgagee as Lessee under this Lease, and the Lease shall continue in full force and effect in accordance with its terms. Any such mortgagee shall become liable as Lessee, and have all of the rights of a Lessee, under the Lease. In addition, if requested by any such mortgagee in writing within sixty (60) days of receipt of the notice of termination from Lessor, Lessor agrees to enter into a New Lease of the Lease Premises with such mortgagee or its designee for the remainder of the Term, effective as of the date of termination, at the same Rent and upon the same terms, covenants and conditions of this Lease. Notwithstanding the above, Lessor shall not be required to recognize a mortgagee as Lessee under the Lease if at the time Lessor receives such mortgagee's written request to be recognized as Lessee, the mortgagee is (i) on the most current "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" published at <http://epls.arnet.gov/>, as said list may be updated from time to time, and/or (ii) a country listed in Publication 10535, *Patterns of Global Terrorism*, available from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and available at [www/global/terrorism/annual\\_reports.html](http://www/global/terrorism/annual_reports.html), (collectively "**Non-Qualifying Parties**"). In the event of such non-recognition, the mortgagee, upon written notice to Lessor delivered within thirty (30) days after written notice of such non-recognition is received from Lessor, shall have up to one hundred and twenty (120) days after such notice to transfer its interest and rights in the mortgage to another entity (other than a Non-Qualifying Party), which entity shall have the same right to be recognized as Lessee under this Lease as such mortgagee has under this Paragraph.

k. If the Lease is terminated due to a default that can be cured by a mortgagee holding a mortgage on Lessee's leasehold interest, Lessor shall provide notice of such termination to all mortgagees eligible to receive notices pursuant to subparagraph 5.b. above. If requested by any such mortgagee in writing within sixty (60) days of receipt of the notice of termination from Lessor, Lessor shall recognize such mortgagee as Lessee under this Lease, and the Lease shall continue in full force and effect in accordance with its terms, provided that such mortgagee agrees to promptly cure any defaults then existing under this Lease, giving due allowance for the reasonable time that may be required for mortgagee to cure such default including any time required to foreclose on its mortgage and take possession of the Lease Premises. Any such mortgagee shall become liable as Lessee, and have all of the rights of a Lessee, under the Lease. In addition, if requested by any such mortgagee in writing within sixty (60) days of receipt of the notice of termination from Lessor, Lessor agrees to enter into a new lease of the Lease Premises with such mortgagee or its designee for the remainder of the Term, effective as of the date of termination, at the same Rent and upon the same terms, covenants and conditions of this Lease.

l. Lessee reserves the right to bring an action against Lessor for any loss, damage, liability, cost or expense (including, without limitation, attorneys' fees and all court costs) incurred by Lessee and occasioned by or in any way related to or connected with Lessor unreasonably or arbitrarily withholding or failing to provide its consent to, or approval of, a subletting to any proposed subtenant, including any claim for violation of any anti-trust or similar laws.

## **6. NOTICES**

a. All correspondence and notices to be given pursuant to this Lease shall be addressed, if to Lessee, to \_\_\_\_\_(TBD), and, if to the United States, to the District Engineer, ATTN: CENAB-RE-S, P.O. Box 1715, Baltimore, Maryland 21203-1715, Facsimile 410-962-4922, or as may from time to time otherwise be directed in writing by the parties. Copies of correspondence and notices will also be furnished to Commander, **NAME OF INSTALLATION**. Notice shall be in writing and shall be deemed to have been duly given (i) three days after said notice is enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid by either registered mail, return receipt requested, or certified mail, return receipt requested, in a post office regularly maintained by the United States Postal Service; or (ii) at the time delivered by hand by a recognized commercial delivery service. A courtesy copy of all notices shall be sent by facsimile to the most current facsimile number available for the party to whom the notice is being sent.

b. All time periods specified in "days" hereunder shall be calculated utilizing calendar days, unless otherwise specified.

## **7. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives.

a. Any references to "Secretary" or "District Engineer" shall be interpreted to be the District Engineer, U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB-RE-S, Baltimore, Maryland 21203-1715.

b. Any references to "Installation Commander" shall be interpreted to be the Commanding Officer of **Name of Installation**.

c. Any references to "DPW", the "Environmental Division" or to "**Name of Installation**" shall be interpreted to be the Directorate of Installation Operations, to **Name of Installation**, Attention: **Contact Name** or Current Director; Commander, **Address of contact**

## **8. APPLICABLE LAWS**

Lessee shall comply with all Applicable Laws relating to the use or occupancy of the Lease Premises. Without limiting the applicability of any laws that may govern this Lease, this Lease shall be subject to the Contracts Disputes Act, 41 USC §601 et seq.

## **9. CONDITION OF PREMISES**

a. Lessee acknowledges that it has inspected the Lease Premises and understands that the same is leased without any representations or warranties whatsoever by Lessor concerning the state of repair or physical condition of the Lease Premises, and without obligation on the part of Lessor to make any alterations, repairs, or additions thereto, except as otherwise provided herein or in the Master Agreement or as may be otherwise agreed in writing by the parties hereto.

b. This Paragraph 9 is specifically subject to the provisions contained in Paragraph 13 hereof, entitled "PROTECTION OF PROPERTY", and Paragraph 26 hereof, entitled "ENVIRONMENTAL PROTECTION".

## **10. TRANSFERS, ASSIGNMENTS AND SUBLEASING**

a. Except as hereinafter provided, Lessee shall not sublease, license or grant any other possessory interest in the Lease Premises, or any part thereof, or any property thereon, or grant any other interest, privilege or license whatsoever in connection with this Lease, without the approval of Lessor, such approval not to be unreasonably withheld, delayed or conditioned (and in no event may any such approval be conditioned upon any change in the Rent or other financial considerations due hereunder), provided, however, that no such sublease, license, grant or mortgage shall be made to a Non-Qualifying Party, as said term is defined in subparagraph 5.j. above or for a prohibited use pursuant to Paragraph 22 hereof, entitled "PROHIBITED USES". In the event Lessee submits a written request for approval of a sublease, license or grant of other possessory interest in the Lease Premises to Lessor, Lessor shall grant or withhold its approval, with a statement of the reasons for withholding such approval, within **number of** business days

of its receipt of such request. In the event Lessor fails to respond to such request in such time period, such request shall be deemed granted for the purposes hereof. Each such sublease, license or grant of interest shall be subject to the terms of this Lease. Notwithstanding the foregoing, provided the sublessee is not a Non-Qualifying Party, then Lessor's consent shall not be required for any sublease (i) to any entity listed on Exhibit D hereto, or (ii) to any entity, provided that the use is for one of the Primary Uses (as defined in Paragraph 1, above), but Lessee shall provide to Lessor, prior to or promptly after such subletting, written notice of such sublease, with a statement from Lessee to Lessor that as of the date of such notice such sublessee is not on either of the lists set forth in Paragraph 5.j identifying Non-Qualifying Parties.

b. Except for an assignment to a Related Entity (as defined below), Lessee may not assign its interest under this Lease prior to the Full Rent Commencement Date without the prior written consent of Lessor, acting by and through the District Engineer, which consent shall not be unreasonably withheld, conditioned or delayed. From and after the Full Rent Commencement Date, no consent to any assignment of Lessee's interest in this Lease shall be required, provided that such assignee is not within the definition of Non-Qualifying Parties, as set forth in subparagraph 5.j., above; provided, however, Lessee shall not assign its interest in this Lease to an entity that is a foreign government or foreign entity (i.e., an entity not formed under the laws of the United States or any state within the United States) without the consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed, unless such assignee is a Non-Qualifying Party. Such consent of Lessor shall be deemed given in the event that Lessor does not provide its consent or objects to providing its consent within **number of days** business days after Lessee delivers to Lessor a request for Lessor's consent to such assignment. No assignments shall be valid unless the assignee shall, by an instrument in a form sufficient for recording and reasonably acceptable to Lessor, enter into an assumption agreement and assume all of Lessee's obligations under this Lease accruing on or after the date of the assignment. A duplicate original of such assumption agreement will be delivered to Lessor, and the assignment shall not take effect until delivery is made. Upon an assignment of Lessee's interest hereunder, and execution of an assumption agreement by the assignee as aforesaid, Lessee shall be released from any and all obligations or liability under this Lease accruing on or after the date of the assignment and, upon Lessee's request, Lessor shall execute a confirmation of release of Lessee in the form attached hereto as Exhibit F. The term "**Related Entity**" as used herein shall mean any entity that controls, is controlled by, or is under the common control with, Lessee, where the term "control" and words of like import means having a fifty percent (50%) or more ownership interest (directly or indirectly) in, or the power or right, by contract or otherwise, to direct the management or determine the policies of, such entity.

c. Upon the request of Lessee, Lessor shall promptly execute, acknowledge and deliver a non-disturbance agreement with any sublessee or proposed sublessee providing (i) the notice rights provided to a mortgagee or sublessee as set forth in Paragraph 5, above, and (ii) that in the event of the termination of this Lease for any reason, such sublessee shall be entitled to continued occupancy in the Lease Premises in accordance with its sublease with Lessee, which shall continue in full force and effect, without disturbance by Lessor or anyone claiming by, through or under Lessor, as long as such sublessee observes and performs all of its obligations under its sublease, and (iii) such other customary terms and conditions as Lessee or such sublessee shall request.

## 11. COST OF UTILITIES

Unless otherwise set forth in this Paragraph 11, Lessor, acting by and through the Installation Commander, shall provide to and for the benefit of the Lease Premises (and Lessee and its successors and assigns, and their respective sublessees, licensees, and mortgagees) during the Term any **name specific services** services required by Lessee to use, occupy and operate the Lease Premises and the improvements thereon. The provision of such services shall be on reasonable terms set forth in the Utility Contract to be executed by Lessor, acting by and through the Installation Commander, and the Contracting Party (hereinafter defined) ("**Utility Contract**"). The Contracting Party shall pay for such services provided by Lessor in the manner prescribed in the Utility Contract. Lessor shall provide such services in the manner prescribed in the Utility Contract, and Lessee shall be deemed to be a third party intended beneficiary of the obligations of Lessor under such Utility Contract to the extent benefiting Lessee or the Lease Premises (or the occupants thereof). Lessee shall pay to the Contracting Party its share of the cost of such services pursuant to and in accordance with the Declaration. The Utility Contract shall remain in effect during the entire Term. Notwithstanding the foregoing, the Contracting Party shall have the right to elect to terminate such Utility Contract with respect to all or any of the services provided therein; in which case, Lessee shall obtain such services directly from the applicable provider or through the Contracting Party as may be required pursuant to the terms of the Declaration. If at anytime after the Contracting Party has terminated any Utility Contract with respect to all or any of the services provided therein and the Contracting Party desires to again obtain such services from Lessor, Lessor shall revise any existing Utility Contract or enter into a new Utility Contract and all the provisions hereof related to any Utility Contract shall apply to such new Utility Contract. The "**Contracting Party**" shall mean the entity contracting with Lessor to provide **name services** to the Lease Premises (along with other properties in the Project), which entity shall be Developer or an affiliate or other designee of Developer. Lessee shall be responsible for arranging directly with the applicable provider for any **name services** services Lessee requires (other than those expressly provided herein to be provided by Lessor).

## 12. MUNICIPAL SERVICES

Unless otherwise set forth in this Paragraph 12, Lessor, acting by and through the Installation Commander, shall provide to and for the benefit of the Lease Premises (and Lessee and its successors and assigns, and their respective sublessees, licensees, and mortgagees) during the Term any and all necessary or desired **name services** services required by Lessee in connection with the Lease Premises and the improvements thereon. The provision of such services shall be on terms set forth in a Support Agreement, to be executed by Lessor, acting by and through the Installation Commander, and the Contracting Party ("**Support Agreement**"). The charge for **name services** services, if any, shall not exceed Lessee's proportionate share of the costs incurred by Lessor to provide such **name services** services to the area comprising the **Name of Installation**, which proportionate share shall be the ratio that the square feet of the improvements on the Lease Premises bears to the square feet of all improvements in the area comprising the **Name of Installation**. Upon written request by Lessee from time to time, Lessor shall provide to Lessee in writing a summary of the square feet of the improvements in the area comprising the **Name of Installation**. At the Contracting Party's request, Lessor and Contracting Party shall also enter into an Support Agreement for the provision by Lessor of road maintenance services and such other services generally provided by Lessor at **Name of Installation**. The Contracting Party shall pay for the services

provided by Lessor in the manner prescribed in the applicable Support Agreement. Lessor shall provide such services in the manner prescribed in the applicable Support Agreement, and Lessee shall be deemed to be a third party intended beneficiary of the obligations of Lessor under such Support Agreement to the extent benefiting Lessee, the Lease Premises (or the occupants thereof). Lessee shall pay to the Contracting Party its share of the cost of such services pursuant to and in accordance with the Declaration. The Support Agreement relating to **name services** shall remain in effect during the entire Term. Notwithstanding the foregoing, the Contracting Party shall have the right to elect to terminate any Support Agreement with respect to all or any of the services provided therein; in which case, Lessee shall obtain such services directly from the applicable provider or through the Contracting Party as may be required pursuant to the terms of the Declaration. If at anytime after the Contracting Party has terminated any Support Agreement with respect to all or any of the services provided therein and the Contracting Party desires to again obtain such services from Lessor, Lessor shall revise any existing Support Agreement or enter into a new Support Agreement and all the provisions hereof related to any Support Agreement shall apply to such new Support Agreement. The Developer and the Maintaining Party shall be deemed to be third party intended beneficiaries of the obligations of Lessor under Paragraphs 11 and 12 hereof, and Developer and Maintaining Party (with the written consent of Developer) shall be entitled to enforce and pursue any remedies in connection with such obligations.

### **13. PROTECTION OF PROPERTY**

a. During the Early Termination Period, Lessee shall keep the Lease Premises in at least as good order as it was in on the date hereof at the expense of Lessee, reasonable wear and tear, alterations, repairs, improvements and construction period requirements hereunder and casualties not covered by insurance excepted. Lessor shall, during the Early Termination Period, provide Lessee access to water, sewer, electric and telephone services at the Lease Premises, provided that Lessee shall pay Lessor at Lessor's standard rates for any such services utilized by Lessee.

b. Following the Early Termination Period, Lessee shall keep the Lease Premises in good order and in a clean, safe and sanitary condition in a manner consistent with similar buildings in **City, State** of similar type, quality, age and location, by and at the expense of Lessee, construction period requirements, casualties not covered by insurance, and reasonable wear and tear, excepted. The Installation Commander and/or the District Engineer may require closure of any or all of the Lease Premises deemed to be a hazardous or unsafe condition in their reasonable judgement (provided such condition creates a significant imminent risk of injury to any persons), subject to the notice and cure rights of the Lessee under this Lease applicable to defaults. Lessee shall be responsible for any damage that may be caused to property of Lessor by the negligent activities of Lessee under this Lease, and shall carry the insurance required hereunder. Any property of Lessor damaged or destroyed by the negligence of Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by Lessee, or at the election of the Installation Commander, reimbursement made therefor by Lessee in an amount reasonably sufficient to compensate Lessor for the value of or damage to the property. From and after the Effective Date, Lessor shall not install or bring on to the Lease Premises any property.

c. If at any time Lessor fails to provide to Lessee or the Lease Premises or any part thereof any utilities or services required pursuant to this Lease, the Support Agreement or the Utility Contract and such failure adversely affects the use or enjoyment of the Lease Premises by Lessee, any sublessee or any party claiming by, under or through Lessee, then in addition to any other remedy available to Lessee, at law or in equity, Lessee shall be entitled to an abatement of the Rent payable by Lessee hereunder in respect of each day that such utilities or services are not provided in proportion to the portions of the Lease Premises that are affected; provided, however, in the event that, notwithstanding such failure, Lessee receives full rent under any sublease of such portion of the Lease Premises during such abatement period, then such abatement shall not apply to the portion of the Lease Premises for which full Rent is received by Lessee during the abatement period.

#### **14. FIRE AND CASUALTY; INSURANCE**

a. In the event the Lease Premises shall be damaged or destroyed by fire or other casualty after the end of the Early Termination Period (without Lessee having exercised its right to terminate), Lessee shall, subject to the availability of insurance proceeds, repair and restore the Lease Premises to their condition existing prior to the casualty.

b. As of the Effective Date, Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The base liability insurance policy, together with any excess liability coverage provided under blanket umbrella coverage, shall be no less than **Dollar Amount** for claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of Lessee at the Lease Premises under the terms of this Lease. Lessor shall be named as an additional insured under such policy.

c. The liability insurance policy shall insure the hazards of the Lease Premises and operations conducted in and on the Lease Premises, including independent contractors and contractual liability coverage. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee; and be reasonably satisfactory to Lessor in all respects as of the date hereof. Except as otherwise expressly provided herein, under no circumstances, except for assignments to sublessees or mortgagees of Lessee hereunder or as provided in the Master Agreement, will Lessee be entitled to assign to any third party rights of action that it may have against Lessor arising out of this Lease.

d. Lessee shall require its insurance company to furnish to the Installation Commander and the District Engineer a copy of the certificate or certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to reasonable review by Lessor (it being understood that additional types of insurance or additional coverages shall not be required), acting through the Installation Commander, every **number of years** years or upon renewal or modification of this Lease. If the amount of Lessee's liability insurance is reasonably comparable to the liability coverage generally carried by other owners of buildings similar to the improvements on the Lease Premises, then such insurance shall be deemed acceptable to Lessor, unless Lessor requires a greater amount of liability insurance and such greater amount is the amount required of all contractors performing services on military bases as provided under published Federal regulations.

e. Lessee shall require that the insurance company give Lessor (to the attention of the Installation Commander) thirty (30) days written notice of any cancellation of such insurance. The Installation Commander and the District Engineer may require closure of any or all of the Lease Premises during any period for which Lessee does not have the required insurance coverage, subject to notice and cure rights of Lessee under this Lease (including, Paragraph 4 hereof).

f. Upon the commencement of construction of the Improvements, Lessee (or its contractor) shall procure and maintain until completion of the Improvements builder's risk insurance, and upon completion of the Improvements, Lessee shall procure and maintain at Lessee's cost a standard fire and extended coverage insurance policy or policies on the Lease Premises. Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Lessee, but subject to any prior rights of any mortgagee to collect such insurance proceeds and apply them to the repayment of any outstanding mortgage loan, shall be payable to Lessee to be used for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to Lessee, or to a mortgagee of Lessee's leasehold interest in the Lease, as designated in writing by Lessee. If the Lessee or designated mortgagee does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee or designated mortgagee for the purposes hereinabove set forth, then such proceeds shall be paid to the Lessor to be used for the repair, restoration or replacement of the property damaged or destroyed, provided, however, that (i) the insurer, after payment of any proceeds to the Lessee, designated mortgagee or the Lessor in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee or the Lessor, and (ii) such sixty (60) day period shall be extended by an additional sixty (60) days if Lessee and mortgagee are in good faith negotiations regarding the use of such insurance proceeds. Nothing herein contained shall be construed as an obligation upon Lessor to repair, restore, or replace the Lease Premises or any part thereof should it be diminished in value, damaged, or destroyed.

g. Lessee may require any sublessees or licensees, as joint and several responsible parties with Lessee for those portions of the Lease Premises under their control, to maintain and carry at their expense portions of the insurance required hereby and Lessee shall not be required to carry insurance on such portion of the Lease Premises insured by any sublessees or licensees, provided that the insurance carried by Lessee and any sublessee or licensee is collectively sufficient to insure all of the improvements on the Lease Premises.

## **15. RIGHT TO ENTER**

The right is reserved to Lessor to enter upon the Lease Premises at any reasonable time and upon reasonable prior written notice of no less than 24 hours, for the purpose of making reasonable periodic inspections of the Lease Premises as to its condition, provided that Lessor complies with any reasonable security and badging requirements that Lessee may require. Any such inspections shall be coordinated with Lessee and shall not disrupt or otherwise disturb the ongoing activities of Lessee or any sublessees, licensees or other parties in occupancy on the Lease Premises. Lessee or any sublessee, licensee or such other party shall have no claim for damages on account thereof against Lessor or any officer, agent, or employee

thereof, except for such damages as may be caused by the negligence or willful misconduct of Lessor or any officer, agent, or employee thereof. Lessor shall have no right to enter the Lease Premises except pursuant to this Paragraph 15 and as necessary to fulfill its obligations under this Lease, the Support Agreement or the Utility Contract, which shall be subject to such reasonable rules and regulations as Lessee shall promulgate; provided, however, that the foregoing restrictions on entering the Lease Premises shall not apply to a Federal governmental agency acting in its regulatory capacity pursuant to its Federal statutory authority.

## **16. INDEMNITY**

Subject to the provisions of this Lease (including the provisions of Paragraph 26 hereof, entitled "ENVIRONMENTAL PROTECTION") and Applicable Laws, Lessee agrees to assume all risks of loss or damage to property and injury or death to persons to the extent such loss, damage, injury or death is caused by or attributable or incident to its possession and/or use of the Lease Premises or the activities conducted by Lessee under this Lease and is not caused by Lessor. Lessee expressly waives all claims by Lessee against Lessor for any such loss, damage, personal injury or death, except to the extent caused by the negligence or willful misconduct of Lessor or any officer, agent or employee thereof. Lessee further agrees to indemnify and hold harmless Lessor, its officers, agents and employees, from and against all third-party suits, claims, demands or actions, liabilities, judgments, costs and reasonable attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage to the extent such injury, death or damage results from, is related to, or is caused by the negligence of Lessee and/or the use of the Lease Premises by Lessee, and is not caused by the negligence or willful misconduct of Lessor or any officer, agent or employee of Lessor. Lessor will give Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

## **17. IMPROVEMENTS TO LEASE PREMISES**

a. Lessee (or one of its affiliates) shall have the right to make the Improvements to the Lease Premises and Lessee (or one of its affiliates), and the sublessees and licensees, from time to time, of the Lease Premises, shall have the right to make such other and additional improvements, alterations and repairs to the Lease Premises as Lessee may determine from time to time ("**Additional Improvements**"). Additional Improvements may include, without limitation, new buildings and/or improvements to existing buildings and the construction of appurtenant facilities, provided that said Additional Improvements are undertaken or constructed in a good and workmanlike manner and in accordance with all requirements of any Applicable Laws, to the extent Lessee is required under such Applicable Laws. The term "**Applicable Law**" shall mean any and all applicable Federal, state, county and municipal laws, ordinances, regulations, orders and requirements.

b. All necessary permits for the Improvements and any Additional Improvements required by Applicable Law shall be obtained by Lessee. Lessor agrees to cooperate with Lessee and to execute any documents or permits reasonably required for the undertaking by Lessee of the Improvements and any Additional Improvements, provided that Lessee shall discharge any expense or liability of Lessor in connection therewith. Within ninety (90) days after the completion of the Improvements and any Additional Improvements costing in excess of **name dollar amount**, Lessee

shall provide Lessor with as-built drawings of such improvements. Lessor agrees that it will not voluntarily submit the Lease Premises or any of the property that is the subject of the Master Agreement to the jurisdiction of any public, governmental or quasi-governmental entity other than those entities that have jurisdiction over such property as of the Effective Date. Lessor shall not by any act or omission cause, in any material respect, any interference with or delay in the development of the Lease Premises or the construction of any improvements thereon (including the Improvements or Additional Improvements).

c. Lessee shall have the right to install signs visible from the exterior of the Lease Premises, subject to any Applicable Law.

d. Lessee shall provide to Lessor, at Lessee's expense, upon receipt thereof by Lessee, copies of all permits, certificates of occupancy, and other approvals, including copies of all plans and/or drawings submitted in connection therewith, obtained from governmental authorities in connection with the construction, use and occupancy of the Improvements and any Additional Improvements.

## **18. RESTORATION**

a. On or before the expiration or earlier termination of the Term of this Lease, Lessee shall vacate the Lease Premises, remove the personal property of Lessee, sublessees, licensees and anyone claiming through any of them, and restore the Lease Premises as hereinafter provided.

b. If the Lease is terminated prior to the end of the Early Termination Period, then Lessee shall restore the Lease Premises to substantially the same condition as at the inception of the Lease, reasonable wear and tear, alterations, repairs, improvements and construction period requirements hereunder and casualties not covered by insurance excepted.

c. If the Lease is terminated or expires after the Early Termination Period, then Lessee shall restore the Lease Premises to a clean and safe condition, reasonable wear and tear, alterations, repairs, improvements and construction period requirements hereunder, and casualties not covered by insurance excepted.

d. Following the expiration or earlier termination of the Term of this Lease, Lessee shall vacate the Lease Premises, remove its personal property and restore the Lease Premises pursuant to subparagraph 18.b. or 18.c. above, as applicable, within a reasonable period of time. In either event, if Lessee shall fail or neglect to remove its personal property and restore the Lease Premises in accordance with the foregoing provisions, as applicable, then, at the option of Lessor, the property shall either become the property of Lessor without compensation therefor, or Lessor may cause the property to be removed and the Lease Premises to be restored to the condition in which Lessee is required to surrender same, and no claim for damages against Lessor or its officers or agents shall be created by or made on account of such removal and restoration work, except to the extent resulting from the negligence or willful misconduct of Lessor or its officers, agents or employees. Lessee shall also pay Lessor on demand any reasonable sum which may be expended by Lessor after the expiration, or earlier termination of the Term of this Lease in restoring the Lease Premises to the condition in which Lessee is required pursuant to the terms of this Paragraph 18 to surrender same.

e. Subject to the provisions of subparagraph 18.a. above, title to any building, structure, or other improvement constructed on the Lease Premises shall remain with Lessee until the end of the Term; at which time title to any such building, structure or improvement shall automatically revert and pass to Lessor. At the end of the Term, title to removable installed equipment, fixtures, trade fixtures and other personal property shall remain with Lessee or its sublessees, licensees or other occupants, as the case may be.

## **19. NON-DISCRIMINATION**

To the extent required by Applicable Law, Lessee shall not intentionally discriminate against any person or persons or exclude them from participation in Lessee's operations, programs or activities conducted on the Lease Premises, because of race, color, religion, sex, age, handicap or national origin. Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board as they relate to the condition of the Lease Premises. Lessee expressly waives all claims against Lessor regarding compliance with the ADA in connection with the condition of the Lease Premises after the date of execution of this Lease.

## **20. SUBJECT TO EASEMENTS**

This Lease is subject to all recorded easements affecting the Lease Premises as of the Effective Date, the Declaration (as defined in the Master Agreement) recorded or to be recorded pursuant to the Master Agreement (as such Declaration may be amended from time to time pursuant to the terms thereof), and established access routes for roadways and utilities located and visible on the Lease Premises. Any easements proposed to affect the Lease Premises shall be subject to the approval of Lessee, which approval shall not be unreasonably withheld provided that such subsequent easements do not interfere, in any material respect, with Lessee's full use and enjoyment of the Lease Premises. In addition to the provisions of Paragraph 23, Lessor hereby grants and reserves unto Lessee (and its sublessees, licensees, and other occupants, and their respective employees, guests, invitees, contractors, agents and mortgagees) in connection with its currently intended and future uses of the Lease Premises easements on all of the property comprising the **Installation Name** for (i) ingress and egress over any roads as required by Lessee for reasonable access to and from and use of the Lease Premises, including construction vehicles, (ii) utility lines, pipes and conduits (including water, sewer, storm water pipes, gas, telephone and electricity) as required by Lessee to serve the Lease Premises, and (iii) storm water drainage as may be required by Lessee for storm water to drain from the Lease Premises. The foregoing easements shall be subject to any limitations, rules and regulations that the Architectural Control Board (as defined in the Declaration) may impose. In the event any part of the land comprising the **Installation Name** (or any other portion of the **Installation Name** that is or could be affected by the foregoing easements) is conveyed, then, Lessor shall provide Lessee with prior notice thereof and, at the request of Lessee (but subject to the consent of Developer), Lessor shall reserve in the instrument conveying such land the foregoing easements as well as any other covenants, conditions and restrictions as Lessee reasonably deems appropriate for the ingress, egress, utilities, storm water and use and occupancy of the Lease Premises by Lessee and its sublessees, licensees, and other occupants, and their respective employees, guests, invitees, contractors, agents and mortgagees. In addition, and without limiting the generality of the foregoing, at Lessee's request, Lessor shall execute and record such easements as Lessee may reasonably request on any specific area

covered by the foregoing easements to accommodate a specific improvement or use, including without limitation, (i) to provide ingress and egress over any other particular road or right-of-way providing access to or servicing the Project or any part thereof (including the Lease Premises), or (ii) in connection with any storm water drainage or any water and sewer and other utility lines, pipes or conduits that have been identified by Lessee to provide service to the Project or any part thereof (including the Lease Premises).

## **21. SUBJECT TO MINERAL INTERESTS**

This Lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. Lessor will provide lease stipulations to BLM (which shall be subject to the approval of Lessee) that shall be included in said mineral leases that will protect the Lease Premises from (i) activities that would interfere in any material respect with Lessee's (including Lessee's sublessees, licensees, and other occupants, and their respective employees, guests, invitees, contractors, agents and mortgagees) full use and enjoyment of the Lease Premises or the operations of Lessee or any sublessee, licensee, or other occupant, their respective employees, guests, invitees, contractors, agents and mortgagees, under the Lease, (ii) diminution of the value of the leasehold interest held by Lessee hereunder, (iii) violation of any Applicable Laws. Lessor shall ensure that no rights are granted to any person with respect to the Lease Premises that will interfere in any manner with Lessee's (including Lessee's sublessees, licensees, and other occupants, and their respective employees, guests, invitees, contractors, agents and mortgagees) full use and enjoyment of the Lease Premises or the operations of Lessee or any sublessee, licensee, or other occupant, and their respective employees, guests, invitees, contractors, agents and mortgagees, of the Lease Premises or that could diminish the value of the leasehold interest held by Lessee hereunder.

## **22. PROHIBITED USES**

Lessee shall be entitled to use, and permit any sublessee, licensee or other occupant of the Lease Premises to use, the Lease Premises for any of the Primary Uses set forth in, and other uses approved by Lessor pursuant to, Paragraph 1, above, entitled "USE OF THE LEASE PREMISES". Lessee shall not permit the Lease Premises to be used for the following purposes: (i) any illegal business or for a purpose in violation of Applicable Laws; (ii) correction or detention facilities; (iii) adult entertainment uses; or (iv) partisan political rallies, political fund-raising events, or related political activities, except (1) to the extent such rallies, events or activities are conducted inside any building or other enclosed improvement, (2) to the extent under Applicable Laws, Lessee is not permitted to prohibit or obstruct such rallies, events or activities, or (3) to the extent the Lease Premises are used as a hotel (or other lodging facility) or conference, meeting or educational center.

## **23. RIGHTS OF ACCESS**

a. Lessor hereby grants to Lessee, its successors and assigns, and the sublessees, licensees and other occupants of the Lease Premises and their respective employees, guests, invitees, contractors, agents and mortgagees, a non exclusive easement for the purpose of

pedestrian and vehicular ingress and egress, and the provision of utility services over and across the improved streets and roadways, now or hereafter existing within **Installation Name** that will enable Lessee, its successors, assigns, and the sublessees, licensees and other occupants of the Lease Premises and their respective employees, guests, invitees, contractors, agents and mortgagees of the Lease Premises, to access and use the Lease Premises as contemplated under the Master Agreement and this Lease and to be provided utility services, municipal services and such other services and uses as may be reasonably requested by Lessee.

b. Lessee, its successors and assigns, and the sublessees, licensees and other occupants of the Lease Premises, and their respective employees, guests, invitees, contractors, agents and mortgagees, will be allowed to enter the Lease Premises through points of ingress and egress to and from **Installation Name** as required by Lessee in the course of improving and operating the Lease Premises on an unrestricted basis, provided however that Lessee acknowledges and recognizes that **Installation Name** is an active U.S. Army installation and, as such, access to the Lease Premises may be subject to temporary identification and/or routing requirements due to the occurrence of police or fire-related emergencies or the occurrence of a national emergency declared by the President or Congress, or due to training exercises (not anticipated to occur more than once in any calendar year), for which at least seven (7) days written notice to Lessee will be given. Lessor agrees to minimize the impact of any such training exercises or emergency-related requirements on the operations of the Lease Premises. Access to the Lease Premises will not be denied, except in the case of police or fire-related emergencies where access to the Lease Premises would seriously endanger the safety of Lessee, its sublessees, licensees and other occupants of the Lease Premises and their respective employees, guests, invitees, contractors, agents and mortgagees. Full access to the Lease Premises will be restored as soon as practicable after the safety issues have been abated. In the event access to or use of the Lease Premises (or any part thereof) is denied for **number of days** or more consecutive business days, the per diem annual Rent shall be abated for the entire period that such access or use is denied on a proportionate basis for the portion of the Lease Premises for which access or use is denied; provided, however, in the event that, notwithstanding that access and/or use of the Lease Premises (or a portion thereof is denied), Lessee receives full rent under any sublease of such portion of the Lease Premises during such abatement period, then such abatement shall not apply to the portion of the Lease Premises for which full Rent is received by Lessee during the abatement period.

c. In the event access to the Lease Premises is restricted (or anticipated to be restricted) for **number of days** or more days, then, without limiting any other right or remedy that Lessee may have as a result thereof, Lessee shall be entitled to arrange for alternative access to the Lease Premises from such road(s) as Lessee determines is more practicable), including at the location set forth on **Exhibit C**, and in connection therewith, Lessee shall be entitled to construct such service roads, curb cuts and perform other associated work to effect such alternative access and to construct a security fence segregating the Lease Premises from the Army base and or certain other portions of the **Installation Name** as appropriate. The security fence would be substantially similar to the security fence then existing around the Army base at the **Installation Name**. The cost of the foregoing shall be paid by Lessor to Lessee within thirty (30) days after Lessee has provided Lessor with an invoice therefor (with reasonable documentation of the costs). Lessee shall also have the option to be reimbursed for such costs from the Escrow Account (as an in-kind consideration) upon written demand

from Lessee. Lessee agrees that prior to undertaking any of the foregoing action to arrange for alternative access, Lessee shall notify Lessor thereof and provide Lessor with an opportunity to discuss the availability of other methods to provide Lessee with alternative access that is acceptable to Lessee.

d. Lessee and its sublessees, licensees, and other occupants, and their respective employees, guests, invitees, contractors, agents and mortgagees shall be entitled to access and use any stores and other facilities available generally to those persons working at the **Installation Name**, other than those areas reserved for military personnel only (such as the commissary).

#### **24. Intentionally Omitted.**

#### **25. NATURAL RESOURCES**

Lessee shall not (i) cut timber, (ii) conduct mining operations, or (iii) remove sand, gravel, or kindred substances from the ground comprising a part of the Lease Premises for purposes not consistent with uses of the Lease Premises permitted hereunder except as authorized in writing by Lessor acting by and through the Installation Commander. Furthermore, Lessee shall not substantially change the contour of the Lease Premises for purposes not consistent with uses of the Lease Premises permitted hereunder, except as authorized by Lessor as provided above, it being understood that Lessee shall be entitled to undertake such excavation, grading and landscaping as appropriate to construct a building and other improvements contemplated by the Master Agreement or otherwise permitted under the terms of this Lease.

#### **26. ENVIRONMENTAL PROTECTION**

a. Lessee shall comply with all applicable local, state and Federal environmental laws, ordinances and regulations in its use, occupation and operations under the Lease, and voluntarily consent to the jurisdiction of the State of Maryland and its environmental enforcement agency, the Maryland Department of the Environment, with respect to enforcement of state permits, orders, statutes and regulations, but only to the extent applicable to the Lease Premises. The parties agree that this provision is intended for the benefit of the State of **Name of State**.

b. Lessee and each sublessee, licensee or other occupant of the Lease Premises shall be solely responsible for obtaining, at its own cost and expense, any environmental permits required for its operations at the Lease Premises, independent of any existing permits. Lessor shall, where permitted by applicable law, assign any such permits to Lessee, or any sublessee, licensee or other occupant thereof, if so requested by Lessee.

c. Lessee shall comply with the requirement of 10 USC § 2692(b)(9) to obtain the approval of the Secretary for the storage of Hazardous Substances (as hereinafter defined) not owned by the Department of Defense on the Lease Premises, except that Lessee shall be entitled to store reasonable amounts of office and cleaning products commonly used in buildings similar to the building constructed or to be constructed on the Lease Premises. Lessor shall not place or introduce, or authorize or permit the placement or introduction of, any such Hazardous Substances on or about the Lease Premises whether owned by the Department of Defense or any other party.

d. Lessor shall cause the Lease Premises, as of the Effective Date, to be in a safe

condition (i.e., a condition protective of human health and the environment), in compliance with and as required by any and all Applicable Laws and free of any Excessive Hazardous Substances (as hereinafter defined). The term "Excessive Hazardous Substances" shall mean any Hazardous Substances in violation of any Applicable Laws or in quantities or concentration that would give rise to remediation liability or responsibility under any Applicable Laws (based upon Lessee's intended construction activities on and use of the Leased Premises), including without limitation the requirements of the Environmental Protection Agency or **Name of State** Department of Environment. If Lessee discovers the presence or a release(s) of any Excessive Hazardous Substance(s) on the Lease Premises that occurred prior to the Effective Date or that resulted from conditions present prior to the Effective Date, whether or not caused by Lessor, and not caused by Lessee or anyone claiming by or through Lessee, or that were introduced or caused by Lessor after the Effective Date, Lessee shall promptly notify Lessor in writing of such presence or release and thereafter either (i) undertake the remediation thereof in accordance with Applicable Laws at the cost and expense of Lessor, or (ii) request that Lessor undertake the remediation. If Lessee performs the remediation, Lessee shall provide Lessor a cost estimate for the completion of the remediation prior to initiating the remediation. If Lessor, acting by and through the Installation Commander, objects to the cost estimate within **number of days** days of receipt thereof, Lessor shall promptly undertake the remediation and complete the remediation in compliance with all Applicable Laws and in a manner consistent with Lessee's use or intended use of the Lease Premises pursuant to the terms hereof. Lessor may impose reasonable terms and conditions regarding said remediation by Lessee ("**Lessor Remediation Terms**") that Lessor deems reasonably necessary to (a) ensure compliance with appropriate sampling protocols, health and safety plans, and other applicable legal or regulatory requirements to protect human health and the environment; and (b) ensure proper disposal of contaminated soil and/or groundwater. If Lessor undertakes the remediation required hereunder, it shall undertake such remediation in compliance with all Applicable Laws and in a manner consistent with Lessee's use or intended use of the Lease Premises and Lessor shall use reasonable means, but without significant additional costs to the Lessor, to avoid and to minimize interference with the use of the Lease Premises by Lessee and its sublessees, licensees, and other occupants of the Lease Premises, and their respective employees, guests, invitees, contractors, agents and mortgagees. Lessor shall cooperate with Lessee in obtaining all governmental approvals required for its activities hereunder, and shall reimburse Lessee for the conduct of the required remediation. If Lessor performs the remediation, Lessor agrees to promptly respond to the above-referenced request by Lessee and use its best efforts to undertake the required remedial actions so as not to unduly delay or interfere with the related activities of Lessee or any sublessees, licensees, or other occupants of the Lease Premises, or their respective employees, guests, invitees, contractors, agents and mortgagees. Remediation undertaken by Lessor under this subparagraph 27.d. for the presence or release of Hazardous Substances not caused by Lessee or anyone claiming by or through Lessee shall be at no cost to Lessee, its sublessees, licensees, or other occupants of the Lease Premises and shall be conducted in accordance with Applicable Laws and Lessee's use or intended use of the Lease Premises. Nothing contained herein (including the foregoing remedies set forth in this Paragraph 26) shall limit any other rights or remedies Lessee may have against Lessor pursuant to any Applicable Laws or this Lease as a result of the existence of any Hazardous Substances on or introduced (other than by Lessee or anyone claiming by or through Lessee) to the Lease Premises, including any right Lessee may have to make a claim for damages resulting therefrom. As used in this Lease, the term "**Hazardous Substance**" means

any (i) substance, material, waste, element, compound, mixture, petroleum products or solution designated, listed, identified or defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sec. 9601 (14), the Resource Conservation and Recovery Act 42 USC 6991(8) (regarding petroleum products), and Section 3001 (a) of the Resource Conservation and Recovery Act, 42 USC 6921 (a) and any other federal or local law governing hazardous or toxic materials or substances and (ii) unexploded ordinances ("UXO"), munitions and explosives of concern ("MEC") and any materials regulated under the Toxic Substance Control Act, 15 USC 2601 et seq. Without limiting any of Lessor's obligations or Lessee's rights or remedies hereunder, Lessor covenants to Lessee to perform all of Lessor's obligations under Section 2.3 of the Master Agreement, in accordance with the provisions thereof, to the extent such obligations relate to or affect any Infrastructure Improvements that benefit Lease Premises or affect the access to or use of the Lease Premises; it being understood that Lessee shall be a third party intended beneficiary of such obligations.

e. Lessee shall be responsible, at no cost to Lessor, for the remediation as required by Applicable Laws of the release of any Hazardous Substances on the Lease Premises caused by Lessee during the Term. Lessee shall use reputable and experienced contractors to perform any remediation work required to be completed hereunder. Such remediation shall be completed promptly, to the extent practicable, and in accordance with Applicable Laws and Lessor Remediation Terms.

f. Environmental Baseline Surveys (collectively, "**EBS**") documenting the known history of the Lease Premises with regard to the storage, release or disposal of Hazardous Substances thereon have been provided to Lessee prior to the execution of this Lease. Upon expiration or earlier termination of the Lease, Lessee shall prepare a document that describes the environmental condition of the Lease Premises at the time of termination or expiration. Such document will assist the Lessor in determining any environmental restoration requirements of Lessee but shall not be binding on Lessor.

g. Lessor shall not conduct any arms or munitions testing on or at the Project.

## **27. SOIL AND WATER CONSERVATION**

Lessee shall maintain, in a manner satisfactory to Lessor, acting by and through the Installation Commander, all soil and water conservation structures that may be in existence and located on the Lease Premises as of the Effective Date or that may be constructed by Lessee during the Term, and Lessee shall take appropriate measures to prevent or control soil erosion within the Lease Premises. Prior to the Effective Date, Lessor shall have designated in writing to Lessee any such structure then located on the Lease Premises. Any soil erosion occurring outside the Lease Premises resulting from the activities of Lessee shall be corrected by Lessee to the reasonable satisfaction of Lessor, acting by and through the Installation Commander.

## **28. TAXES**

Any and all taxes imposed by the State of **name of state** upon the Lease Premises during the Term, or upon the interest of Lessee in the Lease Premises, shall be paid prior to

delinquency by Lessee. Lessee may, if Lessee shall so desire, contest the amount of any such taxes or comparable assessments, in which event, Lessee may defer the payment thereof during the pendency of such contest. Lessor shall cooperate with Lessee in matters related to the payment of taxes, provided that Lessor shall not be required to join in any action or proceeding referred to herein unless required by Applicable Laws in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Lessee, but without expense to, Lessor, Lessee hereby agreeing to save Lessor harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of, or resulting from, any such action or proceeding. It is the expectation of Lessee and Lessor that the Lease Premises and any improvements thereon and interest therein shall be exempt from all real estate and other taxes, including ad valorem taxes and taxes on rent received from the Lease Premises. Notwithstanding anything contained herein to the contrary, in the event any taxes are imposed on Lessee, the Lease Premises or any of the improvements thereon or interest therein, Lessee shall be entitled to reduce any rent payable hereunder (and off-set against any such rent coming due hereunder) any amounts paid by Lessee for any such taxes. It is the expectation of Lessee and Lessor that no transfer or similar taxes will be payable in connection with this Lease or the recording of this Lease or any memorandum thereof. Notwithstanding anything contained herein to the contrary, in the event any such taxes are imposed on Lessee, Lessee shall be entitled to reduce any rent payable hereunder (and off-set against any such rent coming due hereunder) any amounts paid by Lessee for any such taxes.

## **29. COVENANT AGAINST CONTINGENT FEES**

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained or engaged by Lessee for the purpose of securing business. For breach or violation of this warranty, Lessor shall have the right, in addition to any and all remedies available for breach thereof at law or in equity, to require Lessee to pay to Lessor, in addition to the Rent payable hereunder, the full amount of such commission, percentage, brokerage, or contingent fee.

## **30. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

## **31. SEVERAL LESSEES**

If more than one Lessee is named in this Lease the obligations of said Lessees herein contained shall be joint and several obligations.

## **32. MODIFICATIONS**

This Lease, together with the Master Agreement and the exhibits thereto and hereto, contain the entire agreement between the parties hereto in respect of the subject matter hereof,

and no modification of this Lease, or waiver, or consent hereunder, shall be valid unless the same be in writing, signed by both of the parties hereto or by their duly authorized representatives.

### **33. DISCLAIMER**

Lessor makes no representation hereunder regarding its ownership of the Lease Premises. Lessee shall obtain any permit or license which may be required by Applicable Laws in connection with the use of the Lease Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899, 33 USC § 403, and Section 404 of the Clean Water Act, 33 USC §1344. Lessor agrees to cooperate with Lessee, and execute such documents as Lessee may reasonably request, in connection with obtaining all approvals required in connection with Lessee's activities with respect to the Lease Premises, including without limitation construction of improvements thereon.

### **34. PURCHASE RIGHTS**

Lessee is hereby granted the first right to buy the Lease Premises, or portion thereof, pursuant to Section (b)(2) of 10 USC §2667 or any other applicable statute or regulation, including, without limitation, any base realignment or closure actions. Without limiting the foregoing rights and in addition thereto, in the event that any or all of the Lease Premises is declared to be surplus or the base at **Installation Name** is closed or Lessor otherwise desires to sell the Project or any part thereof, then Lessor shall provide to Lessee written notice thereof and Lessee shall be entitled to purchase any or all of the Lease Premises at a price equal to fair market value. Such right is exercisable by the Lessee providing written notice thereof to Lessor, prior to the date that is one hundred eighty (180) days after Lessee's receipt of Lessor's notice provided above. In the event that any or all of the Lease Premises is declared to be surplus or the base at **Installation Name** is closed or Lessor otherwise desires to sell the Lease Premise or any part thereof, Lessor shall provide notice thereof to Lessee, and shall not be entitled to convey same to any person or entity, until Lessee has been provided such notice and been provided the opportunity to exercise its rights hereunder.

### **35. ANTI-DEFICIENCY ACT**

Nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, 31 USC §1341, to the extent such Anti-Deficiency Act applies to such obligations or payments. The Department of the Army shall use its best efforts to seek additional appropriations in the event of any deficiency, but nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

### **36. QUIET ENJOYMENT**

Lessor hereby warrants and covenants that, subject to all the terms and covenants of this

Lease, Lessee shall, during the Term, have peaceful and quiet use and possession of the Lease Premises without hindrance or interruption on the part of (a) Lessor, (b) any other party or parties for whose actions Lessor is legally responsible, or (c) any party or parties claiming by, through or under Lessor.

### **37. RIGHT TO ENCUMBER**

In addition to the other rights and obligations set forth in this Paragraph, and notwithstanding any other provision of this Lease to the contrary, Lessee shall have the right, at any time and from time to time, to encumber the leasehold estate created by this Lease, any and all improvements thereon and/or any of the fixtures, furniture or equipment therein, to any bank, thrift institution, insurance company, or other lender or third party without the consent of Lessor, provided that Lessee is not at that time in default under the provisions of this Lease beyond applicable notice and cure periods.

### **38. INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Lease, or the applicability thereof to any person or circumstances, to any extent be invalid or unenforceable, the remainder of this Lease, or the applicability of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

### **39. COVENANT RUNNING WITH THE LAND**

This Lease shall constitute a real right and covenant running with the Lease Premises, and this Lease and all of its terms and provisions shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, and whenever in this Lease a reference to either of the parties hereto is made, such reference shall be deemed to include, wherever applicable, a reference to the successors and assigns of said party.

### **40. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this Lease, all covenants and obligations as contained within this Lease shall bind and extend and inure to the benefit of Lessor, its successors and assigns, and shall bind and extend and inure to the benefit of Lessee, its successors and assigns.

### **41. MEMORANDUM OF LEASE**

A short form of this Lease or memorandum of Lease, suitable for recordation, shall be executed and acknowledged by the parties hereto simultaneously with the execution of this Lease, or thereafter at the request of either party. Any recordation costs charged in connection with such recordation shall be paid by the party requesting such recordation.

### **42. COSTS/ATTORNEY'S FEES**

Lessee shall be responsible for all costs associated with properly filing notices or memoranda of lease in respect of this Lease at the appropriate governmental offices. If Lessor or

Lessee brings an action to enforce the terms hereof or declare rights hereunder, to the extent permitted by Applicable Laws, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment.

#### **43. LATE PAYMENTS**

If Lessor does not pay any amounts due to Lessee hereunder when due (including without limitation any amounts due pursuant to Paragraphs 4, 23, 24 and 26), then Lessee shall be entitled to charge Lessor interest, at the Interest Rate, on such unpaid amount and shall be entitled to off-set such unpaid amount and any accrued interest against Rent and any amounts payable or becoming payable by Lessee to Lessor hereunder. Nothing in this Paragraph 35 or any other provision in the Lease shall be construed to limit any rights or remedies that Lessee may have against Lessor under the Prompt Payment Act (31 USC Section 3901 et seq.). The "Interest Rate" shall mean the rate of interest established by the Secretary of the Treasury, and published in the Federal Register for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time such interest accrues. Unless a specific time period is otherwise set forth herein, if Lessor is required to pay Lessee for any costs, expenses or other amounts, such costs, expenses or other amounts shall be due and payable within thirty (30) days after Lessee provides Lessor with notice of the amount thereof (with reasonable documentation of the such amounts).

#### **44. DISPUTES**

a. This lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C.601-613).

b. Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.

c. "*Claim*," as used in this clause, means a written demand or written assertion by one of the leasing parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under a lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

d. (1) A claim by the Lessor shall be made in writing and, unless otherwise stated in this lease, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Lessor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Lessor shall provide the certification specified in paragraph d(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the lease adjustment for which the Lessor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessor."

(3) The certification may be executed by any person duly authorized to bind the Lessor with respect to the claim.

For Lessor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Lessor, render a decision within 60 days of the request. For Lessor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.

e. The Contracting Officer's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.

f. If the claim by the Lessor is submitted to the Contracting Officer or a claim by the Government is presented to the Lessor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Lessor refuses an offer for ADR, the Lessor shall inform the Contracting Officer, in writing, of the Lessor's specific reasons for rejecting the offer.

g. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in Federal Acquisition Regulation 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the Contracting Officer.



IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army on behalf of the United States of America, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
JOSEPH W. WHITTAKER  
Deputy Assistant Secretary (Installation  
and Housing), Department of United  
States Army

[or other appropriate authorized person]

THIS LEASE is also executed by Lessee this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

LESSEE

By: \_\_\_\_\_

STATE OF NAME )  
 )  
COUNTY OF )

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned authority, personally appeared the within named Joseph W. Whittaker Deputy Assistant Secretary (Installation and Housing), Department of United States Army, on behalf of the United States of America, and known to me to be the person whose name is subscribed to the foregoing instrument by virtue of the above-cited authority and acknowledged to me that he executed the same in such capacity for the purposes and consideration therein expressed.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Notary Public, State of NAME  
My Commission Expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

## CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of named as Lessee herein; that I, \_\_\_\_\_, who signed this Lease on behalf of \_\_\_\_\_, was and am duly authorized for and on behalf of \_\_\_\_\_, by authority of its governing instruments and all necessary corporate action to execute such Lease.

## **Exhibit A**

### **Description of Lease Premises**

The Lease Premises shall include property bound and described on Exhibit A1 attached hereto and depicted on the plat thereof shown on Exhibit A2 attached hereto.<sup>1</sup> The Lease Premises also include as an appurtenance thereto an easement for ingress, egress and access to the Lease Premises to and from the [redacted] entry gate to [redacted] Installation Name.

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<sup>1</sup> If Exhibit A-2 is not attached to this Agreement as of the date of execution, it shall not effect the validity of this Agreement and shall be attached at a later date upon mutual agreement of the parties.

**Exhibit A-1**

**Property Description of Lease Premises**

**[to be determined and attached]**

**Exhibit A-2**

**Site Plan Depicting Lease Premises**

**[to be determined and attached]**

## Exhibit B

### RENT

The table set forth below represents Lessee's Rent obligations under the Lease, which Rent shall be paid into an Escrow Account pursuant to Paragraph 3. The Rent payable for each Lease Year during the term of the Lease has been determined pursuant to 1.2.4 of the Master Agreement and is more particularly set forth in the following schedule:

Year	Amount/psf	Year	Amount/psf	Year	Amount/psf
1	\$	18	\$	35	\$
2	\$	19	\$	36	\$
3	\$	20	\$	37	\$
4	\$	21	\$	38	\$
5	\$	22	\$	39	\$
6	\$	23	\$	40	\$
7	\$	24	\$	41	\$
8	\$	25	\$	42	\$
9	\$	26	\$	43	\$
10	\$	27	\$	44	\$
11	\$	28	\$	45	\$
12	\$	29	\$	46	\$
13	\$	30	\$	47	\$
14	\$	31	\$	48	\$
15	\$	32	\$	49	\$
16	\$	33	\$	50	\$
17	\$	34	\$		

Notwithstanding the foregoing, from the Partial Rent Commencement Date until the Full Rent Commencement Date, the Rent obligation of Lessee hereunder (and the amount Lessee shall be required to deposit in the Escrow Account in full satisfaction of its Rent obligations under the Lease) shall be **percentage**% of the amount set forth in the chart above (i.e., the amount otherwise payable).

**Exhibit C**

**MAP DEPICTING ALTERNATIVE ACCESS TO LEASE PREMISES**

**Exhibit C**

**Location of Alternative Access**

**Exhibit D**

**PRE-APPROVED SUBLESSEES**

[to be agreed upon by Developer and the Government]

## Exhibit E

### FORM OF ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2005, is made by and between (i) **THE UNITED STATES OF AMERICA**, acting by and through **THE SECRETARY OF THE ARMY** (the "Secretary"), hereinafter referred to as "Lessor", (ii) **name of developer**, a **state and corporate structure** limited liability company ("Developer"), (iii) \_\_\_\_\_, a \_\_\_\_\_ ("Ground Tenant"), and (iv) **NAMETITLE INSURANCE COMPANY**, a **name of state** corporation ("Escrow Agent").

#### RECITALS:

**A.** Lessor, acting by and through the Secretary, by the authority of Title 10, United States Code ("USC"), Section 2667 ("Section 2667"), and Developer, have entered into a certain Master Agreement to Lease dated \_\_\_\_\_, 2005 (the "Master Agreement"), wherein Lessor and Developer have agreed to develop certain property owned by Lessor (referred to therein and herein as the "Project Site") through a series of long term leases (each, an "Enhanced Use Lease"), pursuant to which Developer or another "Ground Tenant" (as defined in the Master Agreement) shall lease from Lessor a portion of the Project Site with the intention of developing and constructing improvements thereon. The Project Site is located on and is a part of a larger tract of land owned by the United States of America, which includes the **Installation Name**. All such land and improvements on such land from time to time, including without limitation the Project Site and the **Installation Name** Army base, shall be referred to herein as the "**Name Site**."

**B.** As contemplated and provided for in the Master Agreement (i) Developer has identified the portion of the Project Site described in Exhibit "A" attached hereto (the "Lease Premises") for the development and construction of improvements, and (ii) Lessor and Ground Tenant have entered into an Enhanced Use Lease dated as of \_\_\_\_\_, 200\_ (the "Lease"), a copy of which is attached hereto as Exhibit "B", and pursuant to which Lessor shall lease the Lease Premises to Ground Tenant, and Ground Tenant shall lease the Lease Premises from Lessor, all on the terms and conditions set forth therein.

**C.** Pursuant to Section 3(b) of the Lease, in lieu of making rent payments directly to Lessor and to facilitate the collection of the Rent due under the Lease by "in kind" payments as authorized by Section 2667, Ground Tenant has agreed to pay Rent (defined in the Lease) due and payable under the Lease into an escrow account opened and maintained by Escrow Agent for the benefit of Lessor, which Rent amounts shall be held, used and disbursed by Escrow Agent for the purposes and on the terms and conditions set forth in this Agreement.

**D.** This Agreement shall constitute the "Escrow Agreement" required to be entered into between Lessor, Ground Tenant and Developer in accordance with Section 3(b) of the Lease.

#### AGREEMENTS:

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor, acting by and through the Secretary, and by the authority of Section 2667, and Ground Tenant, Developer and Escrow Agent each hereby agrees as follows:

**1. Engagement of Escrow Agent.** Lessor, Ground Tenant and Developer collectively hereby appoint Escrow Agent, and Escrow Agent hereby accepts such appointment, to act and serve as the escrow agent under and pursuant to this Agreement.

**2. Ground Tenant's Obligations.** Without in any manner limiting or intending to affect or modify any of the rights or obligations of Ground Tenant or Lessor (or Developer, if any, as a third-party beneficiary) under or pursuant to the Lease, (a) Ground Tenant shall pay into escrow with Escrow Agent all Rent amounts payable under the Lease (collectively, "Lease Payments") in the amounts and on or prior to the dates required pursuant to the Lease, (b) Ground Tenant acknowledges and agrees that the Lease Payments paid into escrow pursuant to this Agreement may be made available and disbursed to Developer as payment for In-Kind Consideration (defined in the Master Agreement) provided by Developer, or any subsidiary or affiliate of Developer (for purposes of this Agreement and as the context shall so require, the term "Developer" shall mean and include Developer and/or any subsidiary or affiliate of Developer designated by Developer to provide In-Kind Consideration, as applicable), pursuant to any one or more Site Work Agreements (defined in Section 4, below) entered into between Lessor and Developer, (c) all Lease Payments deposited by Ground Tenant into escrow with Escrow Agent shall constitute payment by Ground Tenant under the Lease as of the date deposited into the escrow and shall be deemed, constitute and be credited against payments of Rent amounts required to be made by Ground Tenant under the Lease, and (d) Ground Tenant shall have no rights in or to the Escrow Account (defined in Section 3, below) or the Escrow Funds (defined in Section 3, below) deposited and held in and/or disbursed from the Escrow Account from time to time, except as expressly provided herein or in the Lease.

**3. Escrow Account.** Escrow Agent shall deposit, hold and maintain all Lease Payments paid into escrow by Ground Tenant pursuant to Paragraph 2 above, in an interest-bearing escrow account (the "Escrow Account") established by Escrow Agent at a bank or other financial institution acceptable to Lessor and Developer, having a branch office in the city, state metropolitan area, and otherwise pursuant to the terms hereof. All interest earned on any portion of the Escrow Funds held in escrow by Escrow Agent hereunder shall (a) be added to the principal of the Escrow Funds then held in escrow, (b) constitute a part of the Escrow Funds, (c) be held and disbursed together with and as part of the Escrow Funds in accordance with this Agreement, and (d) for income tax purposes, be deemed earned by Lessor. For purposes hereof, the term "Escrow Funds" shall mean the undisbursed balance of any and all Lease Payments, together with any interest or other proceeds earned or accruing thereon or therefrom, held in the Escrow Account from time to time and available to be disbursed to Lessor and/or Developer in accordance with and as required by this Agreement. Lessor shall not have any ownership in the Escrow Account, but Lessor shall be granted a security interest in the funds deposited in the Escrow Account to which it is entitled. The parties hereto shall execute any reasonable instruments (including UCC financing statements) as may be necessary for Lessor to perfect such security interest. Ground Tenant and Developer agree that the Escrow Account will not be voluntarily pledged as security for any debt of the Ground Tenant or Developer or subject to the lien of any creditor of the Ground Tenant or Developer other than Lessor.

**4. Disbursements of Escrow Funds.**

**4.1 Purposes for Which Escrow Funds May Be Used.** Lessor and Developer intend and agree that the Escrow Funds may be made available and disbursed to either (a) Lessor pursuant to and in accordance with the provisions hereof, or (b) Developer as payment for In-Kind Consideration provided by Developer pursuant to any one or more Site Work Agreement(s). For purposes hereof, the term "Site Work Agreement" shall mean any agreement entered into between Lessor and Developer, pursuant to which Developer agrees to undertake, perform and complete Site Work in accordance with and as described therein, which Site Work may (but shall not be required to) include, without limitation development, construction and management services in connection with improvements to be constructed on the Lease Premises. "Site Work" shall mean In-Kind Consideration provided by Developer to Lessor and shall consist of and include any work or services provided, undertaken and performed by Developer on or with respect to the Name Site pursuant to any Site Work Agreement, including without limitation

new construction of facilities on and within the Project Site or **Name** Site, up-grade of existing facilities on and within the Project Site or **Name** Site, repair and maintenance of existing facilities, property management services, engineering services, public relations and community relations services, master planning services, landscaping services, trash and snow removal services, food services, perimeter fence upgrades, and security upgrades.

4.2 Disbursement of Escrow Funds in Payment of Rent. As provided above, it is the intent of the parties that this Agreement facilitate the collection of the Rent due under the Lease by "in kind" payments as authorized by Section 2667 and as provided in Exhibit B attached thereto. Lessor shall enter into good faith negotiations with Developer from time to time in order to reach agreement on Site Work that will constitute appropriate In-Kind Consideration and the value of such In-Kind Consideration. Notwithstanding anything contained herein to the contrary, at the written election of Lessor, any Escrow Funds held by Escrow Agent in the Escrow Account shall be paid from the Escrow Account to Lessor within fifteen (15) days after the receipt by Developer and Escrow Agent of written notice from Lessor of such election; provided that such cash payments shall not exceed the balance of the Escrow Funds then held in the Escrow Account less any portion of Escrow Funds required to be disbursed to Developer as payment for any previously agreed to In-Kind Consideration. Cash payments of Escrow Funds required to be disbursed to Lessor pursuant to this Section 4.2 shall be made by check payable to the order of the Finance and Accounting Officer, Baltimore District, and delivered to the U.S. Army Corps of Engineers, ATTN: CENAB-RE-S, P.O. Box 1715, Baltimore, Maryland 21203-1715, all of which checks shall include the lease number assigned to the Lease to ensure proper processing by Lessor.

4.3 Disbursement of Escrow Funds to Pay for In-Kind Consideration. The exact form of In-Kind Consideration to be provided by Developer and for which the Escrow Funds may be used to pay Developer shall be mutually determined by Lessor and Developer and set forth in a Site Work Agreement executed by both Lessor and Developer. All In-Kind Consideration shall be provided by Developer; provided, however, that Developer shall have the right to engage contractors and sub-contractors to perform and complete the respective aspects and components of the Site Work to be performed by Developer under any one or more Site Work Agreements. If, in connection with negotiating any Site Work Agreement, Developer and Lessor have a dispute regarding how to price any construction work that is provided directly by Developer and not by a subcontractor of Developer, then Developer shall either competitively bid such work to determine the appropriate price or agree to subcontract for the provision of such work; it being understood, however, that the executed Site Work Agreement (and not this Agreement) shall specify the price of such work or the method agreed upon for determining the pricing. Under no circumstances shall Developer be required to provide In-Kind Consideration in excess of the Escrow Funds then available for payment to Developer. Developer agrees to use Escrow Funds disbursed from the Escrow Account as compensation pursuant to the applicable Site Work Agreement for providing In-Kind Consideration. Upon the deposit of Lease Payments into the Escrow Account in accordance with this Agreement, Ground Tenant shall be deemed to have satisfied its obligations with respect to the Rent payable under the Lease as to the amount paid, it being expressly understood and agreed that neither Ground Tenant nor Developer shall have any obligation to provide In-Kind Consideration, except to the extent of Site Work not yet completed under and pursuant to a Site Work Agreement entered into by Lessor and Developer. In-Kind Consideration shall be requested by Lessor and provided by Developer during any Lease Year (defined in the Lease) up to the amount of all Lease Payments paid into the Escrow Account in respect of such Lease Year; provided, however, at Lessor's election, Escrow Funds held in the Escrow Account that have not been expended for In-Kind Consideration in respect of any Lease Year may be carried over to and made available for payment of In-Kind Consideration provided by Developer in subsequent Lease Year(s). In no event shall Developer be required to provide In-Kind Consideration with a value (as determined by agreement between Lessor and Developer) in excess of the total amount of Escrow Funds then held in the Escrow Account.

4.4 Disbursement Procedures for In-Kind Consideration. Developer shall have the right, exercisable not more frequently than once every thirty (30) days, to submit to Escrow Agent (with a simultaneous copy to Lessor) a Draw Request (hereinafter defined) for payment of any amounts due and payable under any Site Work Agreement in connection with the completion or partial completion of any Site Work provided by Developer as In-Kind Consideration. Within ten (10) business days after receipt of a properly prepared and delivered Draw Request, Lessor shall grant or withhold its approval, with a statement of the reasons for withholding such approval, to Developer and Escrow Agent simultaneously. Escrow Agent shall disburse to Developer from Escrow Funds then held in the Escrow Account the amount to which Developer is entitled pursuant to the Draw Request, as long as Lessor has granted approval to Escrow Agent. For purposes of this Agreement, the term "Draw Request" shall mean and include (a) a written request from Developer for a disbursement from the Escrow Account of funds equal to the amount to which Developer is entitled under the applicable Site Work Agreement in connection with the completion or partial completion of any Site Work provided by Developer as In-Kind Consideration pursuant to one or more Site Work Agreement(s), which request shall include the document number assigned to the applicable Site Work Agreement(s) to ensure proper processing by Lessor, and (b) a statement from Developer that the conditions, under the applicable Site Work Agreement, to payment of the amount requested in the Draw Request have occurred.

4.5 Accounting. Escrow Agent shall maintain complete and accurate records of the Lease Payments deposited into the Escrow Account and the disbursements of Escrow Funds out of the Escrow Account for the payment of In-Kind Consideration provided by Developer and, to the extent applicable, cash payments disbursed from Escrow Funds to Lessor pursuant to subparagraph 4.3, above. Not later than 120 days following the end of each calendar year, Escrow Agent shall submit to Lessor, Ground Tenant and Developer a report for the preceding calendar year setting forth a detailed description of (a) the Lease Payments paid into the Escrow Account during such period, (b) Escrow Funds disbursed to Developer in respect of In-Kind Consideration provided during such period, (c) Escrow Funds disbursed to Lessor during such period pursuant to Section 4.3, above, and (d) any balance remaining in the Escrow Account.

**5. Notices.** Any notice required or permitted to be given hereunder must be in writing and shall be deemed to have been delivered (a) upon confirmed receipt if given by facsimile transmission, provided that (i) such transmission is completed at or prior to 5:00 p.m. Washington, D.C. time, on the date transmitted, and (ii) an original of such notice is also delivered pursuant to one of the methods described in Sections 5(b) and 5(c), below, for scheduled delivery on the next business day, or (b) one (1) business day after pickup by Emery Air Freight, United Parcel Service (Overnight), Federal Express, or another similar overnight express service, or (c) upon receipt if delivered by local messenger, in any case addressed to the parties at their respective addresses set forth below:

**If to Developer:**

Name  
Address  
City, State zip  
Attn: name  
Telephone: phone  
Facsimile: fax

**With a copy to:**

law firm for developer  
address  
city, state zip  
Attn: name, Esq.  
Telephone: phone  
Facsimile: fax

**If to Ground Tenant:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**If to Lessor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**If to Escrow Agent:**

Name Title Insurance Company  
address  
city, state zip  
Attention: name, Esq.  
Telephone: phone  
Facsimile: fax

or in each case to such other address as either party may from time to time designate by giving notice in writing pursuant to this Section 5 to the other party. Notices shall be deemed effective if given by counsel to either party on behalf of such party. Effective notice will be deemed given only as provided above, except as otherwise expressly provided in this Agreement.

**6. Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

**7. Escrow Fee.** In consideration of the Escrow Agent's services provided hereunder, Escrow Agent shall be paid \$ \_\_\_\_\_ per annum by Lessor, such amount to be payable on the Effective Date and each anniversary thereof during the term hereof.

**8. Escrow Agent.** In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for those arising out of its willful default, gross negligence or breach of trust, and Escrow Agent shall accordingly not incur any such liability with respect (a) to any action taken or omitted in good faith upon advice of its counsel, or (b) to any action taken or omitted in reliance upon any written notice or instruction provided for in this Agreement. Escrow Agent shall not be responsible for any and all losses, claims, damages, liabilities and

expenses, including reasonable attorneys' fees, which may be incurred by Escrow Agent in connection with its acceptance or performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof, except in the case of Escrow Agent's willful default, gross negligence or breach of trust. In the event of a dispute between Developer and Lessor sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Escrow Funds and all other money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement.

**9. Term.** This Agreement shall terminate upon the expiration of the Lease and the payment of all remaining funds in the Escrow Account pursuant to the terms hereof, or upon the earlier mutual agreement of all of the parties hereto and payment of all remaining funds in the Escrow Account pursuant to the terms hereof.

**IN WITNESS WHEREOF,** Developer, Ground Tenant, Lessor and Escrow Agent have executed this Escrow Agreement, as of the date first written above.

**LESSOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**DEVELOPER:**

**NAME**

By: \_\_\_\_\_  
Name:  
Title:

**GROUND TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**ESCROW AGENT:**

**NAME TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**COPY OF ENHANCED USE LEASE**

## Exhibit F

### UNCONDITIONAL RELEASE

**THIS RELEASE** ("Release") is made this \_\_\_\_\_ day of \_\_\_\_\_, by the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY ("Secretary"), hereinafter referred to as the "**Government**", for the benefit of \_\_\_\_\_ ("**Assignor**").

### WITNESSETH

**WHEREAS**, pursuant to that certain Enhanced Use Lease (the "Lease"), by and between the Government, as lessor, and \_\_\_\_\_, as lessee, for certain real property, as more particularly set forth in the Lease, the Government agreed that upon an assignment of the Lease by Assignor and the occurrence of the condition to Assignor's release under the Lease, the Government would release Assignor from any and all of its obligations and liability under the Lease accruing on or after the date of the assignment;

**WHEREAS**, the Assignor has assigned the Lease effective as of \_\_\_\_\_ (the "Effective Date") and the Government acknowledges and agrees that the conditions to Assignor's release from any and all obligations under the Lease has occurred, and the Government has agreed to release Developer from any and all obligations and liability under the Lease accruing on or after the Effective Date, all as more particularly set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing premises, Ten Dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows: the Government, for itself and its successors and assigns, hereby absolutely and unconditionally releases Developer, and their respective officers, directors, members, employees, agents, from any and all claims, actions, demands, damages, judgments, expenses, obligations and liabilities, arising in law or equity, and in any way relating to or arising from or in connection with the Lease and accruing on or after the Effective Date.

**IN WITNESS WHEREOF**, the undersigned has executed this Unconditional Release by authority of the Secretary of the Army as of the date first above written.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Name:  
Title: